United Nations ST/IC/2009/30

Secretariat

19 August 2009

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2008-30 June 2009**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the United Nations Staff Regulations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff member(s) concerned. This circular covers the period from 1 July 2008 to 30 June 2009.

2. Effective 1 July 2009 a new system of administration of justice in the United Nations came into force. In particular, the Joint Disciplinary Committee was abolished on 30 June 2009. A summary of the new system as it affects disciplinary matters will be set out in next year's report. In addition, revised Staff Regulations and provisional Staff Rules were promulgated effective 1 July 2009 in documents ST/SGB/2009/6 (Staff Regulations) and ST/SGB/2009/7 (Staff Rules). The references in section I below are to the Staff Regulations and Rules that were in effect before 1 July 2009 and to the internal justice system and disciplinary machinery that was applicable during the reporting period.

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* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2008 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47 and ST/IC/2008/41.

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I. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[2]

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and **integrity**" (emphasis added).

4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

5. Article X of the former Staff Regulations, entitled "Disciplinary measures", provided in regulation 10.2 that "the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provided that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provided that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[3] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

6. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a

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[2] For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, entitled "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

[3] Also relevant is Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

decision on whether to pursue the matter as a disciplinary case.[4] During the period covered by the report, preliminary investigations were undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of the head of office.

7. If the Assistant Secretary-General for Human Resources Management decided to pursue the matter as a disciplinary case, the first step was to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member was given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it was decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

8. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member could be subjected to disciplinary measures until the matter had been referred to a Joint Disciplinary Committee for advice as to what measures, if any, were appropriate. Such referral to a Joint Disciplinary Committee could be waived when the staff member concerned and the Secretary-General agreed on a disciplinary measure and the proceedings would have therefore served no valid purpose. When the seriousness of the case warranted summary dismissal, prior referral to a Joint Disciplinary Committee was not required; however, staff members who had been summarily dismissed could, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members subjected to disciplinary measures ultimately had recourse to the United Nations Administrative Tribunal.[5]

D. Disciplinary measures

9. Former staff rule 110.3 provided that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

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[4] The director of mission support in a mission refers the case to the Department of Field Support at Headquarters, which refers the matter to the Office of Human Resources Management if it concurs with the mission.

[5] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found in the online "Case and Jurisprudence Digest" (see http://webfarmext.un.org/hrmtribunal).

10. In determining the appropriate measure, each case was decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

11. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are administrative/managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2008 to 30 June 2009

12. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when they played a role as aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

13. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations, the case is closed and the staff member is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

14. A staff member verbally abused her supervisor with insults.

Disposition: written censure after waiver of referral to a Joint Disciplinary Committee.

15. A staff member abused his authority by ordering the creation of passages in the walls between two United Nations compounds so that persons could pass between the two compounds without passing through security checkpoints, which resulted in the theft of United Nations assets.

Disposition: separation from service after advice of a Joint Disciplinary Committee.[6]

[6] This case may also be classified as one of theft/misappropriation.

16. A staff member abused his authority by directing staff members under his supervision to falsify the official records of the Organization with the intent to conceal daily fuel thefts.

Disposition: summary dismissal.

17. A staff member verbally abused both a colleague and a supervisor.

Disposition: written censure and loss of three steps within grade without possibility of promotion for a two-year period after waiver of referral to a Joint Disciplinary Committee.

B. Fraud/misrepresentation

18. Three staff members misused United Nations telephone personal identification number (PIN) codes assigned to other staff members.

Disposition: censure and loss of one step in grade after waiver of referral to the Joint Disciplinary Committee.

19. A staff member engaged in forgery, fraud and falsification of official United Nations records with the intent to defraud the Organization.

Disposition: summary dismissal.

20. A staff member created a fictitious United Nations employment attestation on United Nations letterhead to obtain an entry visa for a non-United Nations staff member.

Disposition: summary dismissal.

21. A staff member misused United Nations letterhead to secure work permits for non-United Nations staff members, including using false and misleading information that placed a financial obligation on the Organization.

Disposition: summary dismissal.

22. A staff member misused United Nations telephone PIN codes assigned to other staff members.

Disposition: censure after waiver of referral to a Joint Disciplinary Committee.

23. A staff member fraudulently used United Nations training funds with the intent to defraud the Organization.

Disposition: written censure and demotion by one grade without possibility of promotion for two years after advice of a Joint Disciplinary Committee.

24. A staff member knowingly arranged a trip outside the mission area without authorization, and falsely claimed illness to the supervisor.

Disposition: written censure and a one-year deferment for a within-grade increment after advice of a Joint Disciplinary Committee.

25. A staff member misused a United Nations-issued mobile telephone for private calls, and deliberately failed to declare these private calls through the United Nations mobile billing systems in order to avoid payment.

Disposition: written censure and a fine of two months' net base salary after advice of a Joint Disciplinary Committee.

26. A staff member used his position to enter into a private transaction involving the sale of United Nations property to a third party.

Disposition: separation from service after advice of a Joint Disciplinary Committee.

27. A staff member knowingly submitted false information in support of an application for financial assistance from staff mutual funds.

Disposition: summary dismissal.

28. Two staff members improperly collected visa fees and passport registration fees from newly appointed staff under the false pretences that fees were required.

Disposition: summary dismissal.

C. Theft/misappropriation

29. A staff member attempted to steal a chair from the Organization.

Disposition: loss of one step in grade and a two-year deferment for a within-grade increment after waiver of referral to a Joint Disciplinary Committee.

30. A staff member forged the signature of his supervisor in attempting to steal three barrels of fuel belonging to the Organization.

Disposition: summary dismissal.

31. A staff member attempted to steal eight jerry cans filled with diesel fuel belonging to the Organization.

Disposition: separation from service after advice of a Joint Disciplinary Committee.

32. Two staff members stole vehicles belonging to the United Nations.

Disposition: separation from service after advice of a Joint Disciplinary Committee.

33. A staff member stole food rations from a United Nations warehouse.

Disposition: summary dismissal.

34. A staff member attempted to misappropriate printer cartridges belonging to the Organization with the intent to resell them for private financial gain.

Disposition: summary dismissal.

35. A staff member attempted to steal jewellery belonging to a visitor to the United Nations.

Disposition: written censure, loss of three steps in grade and a two-year deferment for a within-grade increment after advice of a Joint Disciplinary Committee.

36. A staff member stole diesel fuel for personal use by falsifying the official records of the Organization.

Disposition: summary dismissal.

37. A staff member took property belonging to the Organization without authorization including chairs, a calculator, a DVD/VCR player, a wall clock and an electric fan.

Disposition: summary dismissal.

38. A staff member stole fuel from a United Nations vehicle.

Disposition: separation from service after advice of a Joint Disciplinary Committee.

D. Sexual exploitation and sexual abuse

39. A staff member engaged in sexual exploitation and abuse by paying prostitutes for sexual intercourse.

Disposition: summary dismissal.

E. Computer-related misconduct

40. A staff member regularly sent, received and stored large quantities of pornographic material using the Organization's information and communications technology resources, and distributed this material to a large mailing list of United Nations colleagues.

Disposition: summary dismissal.

41. A staff member knowingly and wilfully received, downloaded and stored pornographic materials on the United Nations computer system.

Disposition: written censure and a fine of three months' net base salary after waiver of referral to a Joint Disciplinary Committee.

42. A staff member used his United Nations computer to store pornographic material, which was found in his trash bin after deletion.

Disposition: written censure after advice of a Joint Disciplinary Committee.

F. Other

43. A staff member assaulted another staff member by attempting to strangle him, including brandishing a knife and threatening to kill him. The staff member also carried unauthorized passengers in a United Nations vehicle.

Disposition: withdrawal of driving privileges, demotion by one grade level and withdrawal of all supervisory duties for a period of two years after advice of a Joint Disciplinary Committee.

44. A staff member sexually assaulted another staff member.

Disposition: written censure after advice of a Joint Disciplinary Committee.

45. A staff member improperly solicited moneys from United Nations staff members and persons external to the Organization in connection with a fraudulent investment scheme and engaged in outside activities related to the scheme without obtaining the Secretary-General's approval.

Disposition: summary dismissal.

46. A staff member intervened in local political affairs as a member of a political organization in violation of the duty of independence and impartiality as an

international civil servant. The staff member also led a raid in a local village during the course of which the villagers were threatened and detained.

Disposition: written censure after waiver of referral to a Joint Disciplinary Committee.

47. A staff member failed to honour his private legal obligations by neglecting to pay a creditor and failing to provide information to the Secretary-General concerning the fulfilment of his private financial obligations when specifically requested to do so.

Disposition: written censure after advice of a Joint Disciplinary Committee.

48. A staff member sexually harassed three new female staff members.

Disposition: demotion of one grade, with no possibility of promotion for two years; a written censure; attendance at counselling with the Staff Counsellor's office; and reassignment to another section, after waiver of referral to a Joint Disciplinary Committee.

49. A staff member physically and verbally assaulted another United Nations staff member while on duty.

Disposition: summary dismissal.

50. A staff member failed to file a financial disclosure statement for 2005.

Disposition: written censure and a fine of two months' net base salary after advice of a Joint Disciplinary Committee.

51. A staff member engaged in acts of voyeurism in the men's toilets.

Disposition: written censure and a fine of one month's net base salary after waiver of referral to a Joint Disciplinary Committee.

52. A staff member sexually harassed six staff members.

Disposition: written censure after advice of a Joint Disciplinary Committee.

53. A staff member failed to honour private legal obligations.

Disposition: written censure after advice of a Joint Disciplinary Committee.

54. A staff member was found in possession of a controlled substance in violation of local laws and assisted a colleague to use the United Nations diplomatic pouch to send packages for private purposes in violation of the local law.

Disposition: demotion of one grade, deferral of eligibility for a promotion for a period of two years and written censure after waiver of referral to a Joint Disciplinary Committee.

55. A staff member improperly solicited and received moneys from local citizens in exchange for their initial recruitment and continued service with the Organization.

Disposition: separation after advice of a Joint Disciplinary Committee.

56. Three staff members were arrested and charged by local authorities for using illegal drugs.

Disposition: written censure after waiver of referral to a Joint Disciplinary Committee.

57. A staff member failed to honour private legal obligations when requested to do so.

Disposition: a written censure after advice of a Joint Disciplinary Committee.

III. Summary of cases completed during the reporting period

58. The list below shows the summary of cases completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. It should be noted that, owing to the time required to process disciplinary matters under established procedures, including the need in some cases to obtain further information after the initial investigation, the requirement to give staff members an opportunity to provide comments on charges of misconduct and referral of a case to a Joint Disciplinary Committee for advice, the figures reflect cases completed during the reporting period that had been referred to the Office of Human Resources Management prior to and during the reporting period.

Number of staff[a]	38 037
Number of cases completed during the reporting period	301
Summary dismissals	16
Other disciplinary measures after waiver of referral to a Joint Disciplinary Committee	15
Other disciplinary measures after advice of a Joint Disciplinary Committee	19
Administrative measures[b]	91
No action after disciplinary proceedings were initiated[c]	
(a) No action after a Joint Disciplinary Committee	14
(b) No action after receipt of staff member's comments on the allegations	81
Total	**95**
No action due to the case not being pursued[d]	15
No disciplinary or administrative action[e]	50

[a] As at 12 August 2009.

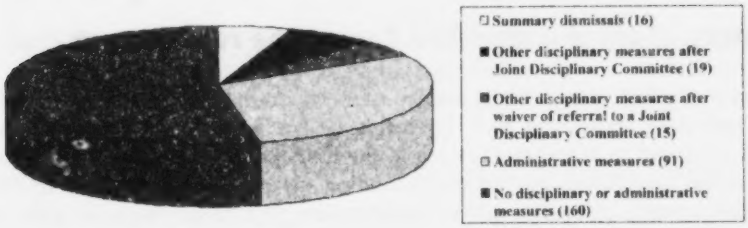
[b] Administrative measures include written or oral reprimands, warnings and letters of caution, all of which are important measures for upholding standards of proper conduct and promoting accountability. Additionally, where behaviour affects performance, the issue is addressed in the context of performance management, which may include training, counselling, withholding of salary increments and a non-renewal or termination of appointment.

[c] Where staff members were charged with misconduct and were given the opportunity to provide comments.

[d] Where a review of the dossier indicates the initiation of disciplinary proceedings is not warranted.

[e] The decision not to take disciplinary or administrative action is normally based on the separation of the staff member from service during the disciplinary proceedings or after the completion of the investigation owing to resignation, office-wide downsizing or death. A note is placed on the staff member's official status file.

Figure
Summary of cases completed during the reporting period


Summary dismissals (16)
Other disciplinary measures after Joint Disciplinary Committee (19)
Other disciplinary measures after waiver of referral to a Joint Disciplinary Committee (15)
Administrative measures (91)
No disciplinary or administrative measures (160)

IV. Criminal behaviour

59. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and inform Member States on the actions taken. The Office of Legal Affairs has advised that criminal behaviour of staff members can be established only by competent authorities of Member States, in accordance with their criminal procedures. During the reporting period, four cases were reported where United Nations staff members had been subject to criminal proceedings by the competent national authorities of Member States:[7]

(a) A staff member was arrested and charged by local authorities for using illegal drugs. The staff member was convicted and sentenced by a local court to serve seven days of administrative arrest. The staff member served his sentence and was subsequently released by local authorities;[8]

(b) A staff member was arrested and charged by local authorities for using illegal drugs. The staff member was convicted and sentenced by a local court to serve 20 days of administrative arrest. The staff member served his sentence and was subsequently released by local authorities;

(c) A staff member was arrested and charged by local authorities for using illegal drugs. The staff member was convicted and sentenced by a local court. The staff member served his sentence and was subsequently released by local authorities;

(d) A staff member was convicted by the local authorities of possession of child pornography and smuggling prohibited images depicting explicit child pornography. The staff member pled guilty to both counts and was sentenced to 72 days in jail.[9]

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[7] The information may not represent the totality of criminal cases resulting in a conviction during the reporting period.

[8] With respect to this case and the cases set out in sub-paragraphs 59 (b) and (c) below, please refer to paragraph 56.

[9] The matter remains under review by the Administration.